

Letter of Terms

August 21, 2016
To Whom It May Concern,

In order for the City of Memphis to appropriately and thoroughly review your proposed plan for the Mid-South Coliseum, we ask that you complete this Letter of Terms in its entirety.

Building Name/Location:	Mid-South Coliseum (“Building”) 996 Early Maxwell Blvd, Memphis, TN 38103
Landlord:	The City of Memphis (“City”)
Tenant:	WISEACRE Brewing Company, LLC Frank B. Smith, III Davin Bartosch Kellan Bartosch
Premises:	The entire Building and the Land it’s located on. The Building is approximately 104,000 SF. The Land is approximately 17 acres on the east side of Early Maxwell Blvd. as shown on the attached Exhibit.
Commencement:	<p>To begin deliberations in good faith, WISEACRE is willing to put up good faith deposit of \$25,000. Upon acceptance of this Letter of Terms and acceptance of Council Resolution, WISEACRE will immediately undertake the extensive and expensive diligence process required. If after its good faith effort WISEACRE discovers unexpected issues/concerns or otherwise determines the project cannot work as expected, City will refund the good faith deposit. If after conducting diligence WISEACRE proceeds with the full lease, CITY will reimburse WISEACRE for up to \$25,000 of initial project costs.</p> <p>As part of lease terms agreed upon and bound by vote of City Council, WISEACRE requests the City grant 120-180 days for WISEACRE to conduct all necessary due-diligence. At its sole discretion, WISEACRE will have the right to cancel the contract with no further cost or obligations if notice is given prior to the end of the due diligence period.</p> <p>Within ten (10) days after the effective date of this Letter of Terms, the City shall deliver to Wiseacre: (A) any existing title reports on the Building and Land, including all exception documents; (B) copies of any leases and the other agreements,</p>

	<p>contracts, warranties, reports and other materials regarding the Building and the Land and City's ownership of the Building and the Land that are now in City's possession or under City's control; and (C) all material surveys, geological studies and reports, soils reports, grading plans, Phase I and Phase II Environmental Studies and Reports, property insurance, contracts with consultants and contractors that have provided work on the Building and Land, and other documents and reports regarding the physical condition of the Building and Land that are now in the City's possession or under City's control.</p> <p>Assuming successful completion of due diligence, construction is expected to begin before the end of 2016. WISEACRE expects to undertake the project in phases as described below.</p> <p>The Lease shall commence the earlier of: (i) Wiseacre substantially completing Phase I of the improvements, or (ii) eighteen (18) months after the end of the due diligence period.</p>
Rental Rate:	<p>Base Rent:</p> <p>Effective on the Lease Commencement Date, the Base Rent shall be Twenty-five Thousand Dollars (\$25,000.00) per month for months 1-60. Rent shall increase five percent (5%) every 5 years thereafter.</p> <p>Tenant shall receive a credit against future rent obligations equal to Tenant's total expenditures required to render the building in a "warm lit shell" condition. For the purposes of this agreement "warm lit shell" condition shall be defined as a minimally finished interior, with ceilings, lighting, plumbing, heating and cooling (HVAC), unpainted interior walls, electrical outlets, elevators, rest rooms, and a concrete floor.</p> <p>In no event, shall Tenant's rent credit exceed \$12,000,000.</p>
Intended Use:	<p><u>Brewery Operations (Phase 1)</u></p> <p>The primary objective of the project is to transform the Building in an efficient production and packaging facility for WISEACRE. Time is of the essence as WISEACRE has reached maximum production capacity in its current facility. With this expansion, annual production will grow from current 20k bbls/year to 105k bbls/year. Brewery employment is expected to grow from 25 to 125.</p> <p>Brewing and fermentation operations require approximately 30k</p>

	<p>SF and will consume the majority of the current main arena floor. Packaging, warehouse, shipping, cold storage and offices will occupy the east end of Floor 1; around and under the Concourse Level.</p> <p>It will be necessary to construct 8-10 dock bays on the east end of the Building with proper ingress/egress to Southern Ave. It is also expected that WISEACRE will investigate possibility of utilizing the adjacent rail line.</p> <p>Design/construction of necessary Building modifications will occur simultaneously with design/fabrication of German brewing equipment. Target completion date in mid-2018 for both.</p> <p><u>MIXED USE Purposes (Phase 2)</u></p> <p>WISEACRE will occupy a portion of the Promenade with tasting room, event space, retail merchandise, etc. Remaining spaces will be subleased to a variety of complimentary users. Of primary importance is to honor the historical significance of the Building with prominent space dedicated to its civil rights, wrestling and musical heritage. Beyond that, a wide range of restaurant, retail and recreational business operators have expressed interest in locating adjacent to WISEACRE. And in the spirit of public/private partnership, WISEACRE hopes the City would find potential use for space (e.g. MCVB, EDGE, etc.) as well as the various local business incubators.</p> <p>The permitted uses of both the manufacturing space and tap room, and the other areas, will be spelled-out in the lease. City approval will be required for any use not explicitly authorized.</p>
Operating Hours:	<p>WISEACRE sales, marketing, business operations and shipping/receiving are normal business hours.</p> <p>WISEACRE brewery operations are 24/7.</p>
Utilities:	Tenant shall place utilities in its name and pay the utility provider directly for the utilities serving the Premises.
Landlord's Work:	The Building shall be delivered in its "as-is" condition.
Tenant's Work:	Tenant shall be responsible for any improvements and renovations. Tenant to provide a list of proposed interior and exterior improvements and construction costs estimates

	<p>associated with such improvements.</p> <p>WISEACRE will provide detailed list of proposed modifications prior to end of the 120-180 day due diligence period. The City shall retain and remove from the Building, prior to Lease Commencement, the items identified in a separate document that is to be drafted.</p>
Building Façade:	<p>The exterior façade of the Building shall remain in-tact to the extent possible. WISEACRE will consult with City regarding any proposed modifications to the exterior façade.</p> <p>So long as the building remains on the Historic Register, any proposed modifications to the exterior shall be approved in writing by the City Engineer. Furthermore, Tenant shall retain the historic exterior façade of the Mid-South Coliseum in accordance to the Secretary of the Interior Standards for Rehabilitation.</p>
Tenant Financials:	<p>Tenant shall provide financials for City's review. In addition, Tenant shall provide an outline of the proposed financing for the improvements and investments detailed in the Intended Use plan.</p> <p>WISEACRE will provide full details of financing plans prior to end of the 120-180 day diligence period. WISEACRE and the City will execute a Letter of Intent to evidence the parties' intent regarding this property.</p>
Parking:	<p>Parking arrangements with WISEACRE will be determined in accordance with the existing obligations. To the extent the City maintains the ability to generate revenue from the parking surfaces in and around the Building and the Land during major events, the City shall be solely responsible for the maintenance, upkeep, and resurfacing of the parking surfaces in and around the Building and the Land, provided those sections are not being used for WISEACRE's expansion needs.</p>
Maintenance:	<p>Tenant shall be responsible for the structural integrity of the Building (roof, exterior walls, foundation) and for all the maintenance and repairs of the mechanical, electrical, and plumbing systems throughout the Lease.</p> <p>Tenant will maintain appropriate annual service checks and repairs on all the Building's systems.</p> <p>The City shall have no maintenance responsibilities for the Coliseum and land leased by WISEACRE except the City shall be solely responsible for the maintenance, upkeep, and resurfacing</p>

	of the parking surfaces in and around the Coliseum and the Land, provided those sections are not being used for Wiseacre's expansion needs.
Insurance:	Tenant will be responsible for insuring all of its personal property and equipment. Tenant will have to obtain general liability, worker's comp, and other riders in the amounts required by the City's Risk Management Office.
ADA:	<p>Tenant shall solely be responsible for any updates or modifications required to ensure the Building complies with the Americans with Disabilities Act. Construction drawings and improvements shall be reviewed and approved by the City's ADA consultant.</p> <p>WISEACRE expects the adaptive reuse of the Building as a brewery will mitigate most or all ADA compliance issues. Nevertheless, WISEACRE requests the City provide necessary legal assistance to confirm compliance and dismissal of all existing lawsuits relating to the Building.</p> <p>The City will review the development plan with an ADA consultant and offer recommendations or assistance as appropriate</p>
Subleasing:	<p>WISEACRE intends to sublease portions of the Building for suitable and synergistic uses. Tenant will make all necessary modifications at its own expense the City shall be entitled to 30% of the gross sublease rent generated at the building in excess of \$25,000.00 per month.</p> <p>See above note under "Uses". The City shall have the right to deny certain types of uses by sublease tenants (i.e. no adult entertainment).</p>
Zoning:	Currently, the Building is zoned EMP, which stands for Employment, a light industrial zoning district. Tenant shall be responsible for ensuring the proposed use complies with the zoning requirements.
Tax Incentives:	<p>During the 120-180 day due diligence period, WISEACRE intends to pursue all Historic Tax Credits, New Market Tax Credits or other local, state or federal government incentives as may be appropriate or available.</p> <p>City agrees to help assist Tenant in the pursuit of possible tax incentives, but the City does not make any representations or guarantees as to the availability of such incentives.</p>

<p>Tenant Default or Early Termination:</p>	<p>In the event Tenant defaults or terminates the Lease prior to expiration, Tenant shall be responsible for the removal of all its equipment. The City acknowledges that WISEACRE's intended adaptive reuse of the Building will forever make it unsuitable to be used for its original purpose as a sports/performance venue.</p> <p>The Initial Lease Term can be up to Three Hundred and Sixty (360) months (30 years). With at least 180 days prior written notice, Tenant may renew the Term for two successive rental terms of sixty (60) months each so long as this Lease is in full force and effect and Tenant is not in default of the Lease. Base Rent during the Renewal Term(s) shall be the same as the rent during the term just prior, except it shall increase by 5%.</p> <p>The City agrees not to sell or otherwise transfer the Premises during the term of this Lease.</p> <p>Tenant cannot transfer their leasehold interest in the Building without the City's express written authorization.</p> <p>The City may terminate this Lease and recapture the Premises immediately in the event of any of the following events:</p> <ol style="list-style-type: none"> a. Wiseacres assigns, voluntarily or involuntarily, its leasehold interest in and to the Premises, or subleases all or a portion of the Premises, without the City's consent or approval; b. Wiseacres has filed bankruptcy, has been adjudicated bankrupt, or has made an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of the Museum's assets; c. Construction of the Coliseum is not initiated within 12 months of the Commencement Date of a fully executed lease or construction of the Coliseum, unless due to circumstances beyond the Wiseacres' control, is not substantially completed within two years of the Commencement Date of the lease; or d. If Wiseacre fails to continuously operate its business or to pay all rent due for three or more months the City may elect to terminate the lease upon sixty days prior written notice of the City's intent to so terminate.
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Confidentiality and Standstill:	<p>Landlord and Tenant agree that no public or private announcement will be made regarding the proposed transaction outlined in this document. The Terms outlined in this document shall be kept confidential by each party and their agents to the extent permitted by law.</p> <p>In consideration of the forfeiture of the Earnest Money Deposit, the substantial expenditures of time, effort and expense to be undertaken by Wiseacre in connection with the conducting of the due diligence hereunder, the preparation of this Letter of Terms, the lease agreement and the other related documents, the City, to the extent permitted by law agrees that, from the date of this Letter of Terms until the lease agreement shall have been signed, neither the City, nor any of its respective agents will, directly or indirectly, solicit or furnish any information to any prospective buyer or tenant, commence or conduct negotiations with any other party, or enter into any agreement with any other party concerning the sale or lease of the Building or Land referenced herein or any portion thereof.</p>
Response Timeline:	Time is of the essence
Lease Agreement	<p>The parties agree to negotiate in good faith to execute a lease on the terms found in this Letter of Terms, but either party may, in its sole discretion, terminate negotiations toward the execution of a lease and decline to execute a lease if a lease is not executed within sixty (60) days following the effective date of this Letter of Terms. The initial draft of the lease shall be prepared by the City or its counsel. The lease shall be consistent with the terms and conditions of this Letter of Terms and shall contain such additional covenants, representations and conditions (including leasehold mortgage provisions) as are customary for transactions of this type.</p>

This Letter of Terms merely solicits information. Neither party will have any obligation with respect to any proposal, including any duty to negotiate to reach an agreement. The terms and conditions set forth above shall not be binding upon Tenant or City until such time as the lease and related documents have been approved by the Mayor and the City Council; provided further that such lease related documents have been fully executed by both Tenant and City and delivered.

Exhibit A – “Land”

